In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1476

EMMETT J. STEBBINS, PETITIONER

v.

ALLSTATE INSURANCE COMPANIES
AND
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

Petitioner contends that the district court improperly dismissed his complaint, allegedly without requiring respondents to answer.

In July 1971, petitioner filed an administrative complaint with the Equal Employment Opportunity Commission, charging Allstate Insurance Company with employment discrimination on the basis of race in violation of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. 2000e, *et seq.* In September 1971, the Commission issued a right-to-sue letter to petitioner; he then filed suit against Allstate, alleging that the company had deprived him and members of his class of their statutory rights as

defined in Title VII and the Civil Rights Act of 1866, 14 Stat. 27, as amended, 42 U.S.C. 1981 (R. 1). Petitioner also joined the Commission as a defendant alleging, in part, that the Commission had withheld "documentary evidence of racial employment discrimination by Allstate" (R. 1, paragraphs I(g), (h)). In a separate claim, petitioner sought certain depositions, responses to interrogatories, and documents from the Commission, under Rules 27(c) and 34(c) of the Federal Rules of Civil Procedure (R. 1, paragraph II(e)).

Respondent Allstate moved to dismiss the complaint for failure to state a claim upon which relief could be granted, asserting, *inter alia,* that the claim set forth in the complaint was barred by the doctrine of collateral estoppel (R. 3). The Commission filed a motion to dismiss for failure to state a claim against it and for lack of jurisdiction (R. 10).

The district court dismissed the complaints against both the Commission and Allstate (R. 20, 28), and petitioner appealed (R. 25). While the appeal was pending, the court of appeals decided *Stebbins* v. *Keystone Insurance Co.,* 481 F. 2d 501 (C.A.D.C.), which held improper, in a similar case filed by petitioner, a dismissal grounded on the doctrine of collaterl estoppel. On July 24, 1973, the court of appeals remanded the instant action for proceedings not inconsistent with its decision in *Stebbins* v. *Keystone Insurance Co., supra* (R. 29). Petitioner did not seek review of that decision in this Court.

Respondent Allstate renewed its motion to dismiss for failure to state a claim upon which relief could be granted on the grounds advanced earlier, with the

exception of collateral estoppel (R. 30). This motion was granted on September 14, 1973 (R. 33). On October 29, 1973, the Commission renewed its motionto dismiss (R. 39) which was granted (R. 42). Petitioner appealed from these dismissals (R. 40) and the court of appeals summarily affirmed on February 4, 1974. A petition for rehearing *en banc* was denied on February 27, 1974. The petition for a writ of certiorari was filed on April 3, 1974.

The district court's dismissal of the cause against the Commission was proper, since petitioner failed to state a claim against the Commission under either Title VII or 42 U.S.C. 1981.[1] Petitioner neither sought employment with the Commission nor claimed that the Commission interfered with his attempt to secure employment or in any way harmed any of his employment-connected rights or privileges. Petitioner's reliance on Rules 27(c) and 34(c) of the Federal Rules of Civil Procedure to sustain a claim that the Commision should respond to interrogatories, make its officials available for depositions, and provide documents was properly found not to afford a basis for an independent action against the Commission. Instead, the Rules provide for the discovery of such materials without making the person providing the information a party. See Rules 26, 30, 31, Fed. R. Civ. P.[2]

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[1]Rule 12(b)(6), Fed. R. Civ. P., provides that the failure to state a claim upon which relief can be granted may be raised, as it was here, by a motion to dismiss. That motion constituted the answer for purposes of Rule 12(a), Fed. R. Civ. P.

[2]Rule 30(b)(6), Fed. R. Civ. P., provides specifically for naming government agencies in notices of intent to take depositions and in subpoenas.

It is not clear that the court of appeals' remand affected the district court's original dismissal of the case against the Commission. The remand order directed the district court to reconsider the case in light of *Stebbins* v. *Keystone Insurance Co.*, *supra*, which dealt only with the doctrine of collateral estoppel; the Commission had not relied on this doctrine to support its first motion to dismiss. Nevertheless, the Commission did renew its motion to dismiss in the district court after remand (R. 39). The district court granted this motion, and the court of appeals summarily affirmed. Thus, the court of appeals concluded that its earlier mandate had been given proper effect.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

WILLIAM A. CAREY,
General Counsel,

JOSEPH T. EDDINS,
Assistant General Counsel,

BEATRICE ROSENBERG,
CHARLES L. REISCHEL,
RICHARD A. GLADSTONE,
Attorneys.
Equal Employment Opportunity Commission.

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